

ORIGINAL

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY DEPUTY

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Attorneys for Plaintiff, YAMAHA MOTOR CORPORATION, U.S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YAMAHA MOTOR CORPORATION,
U.S.A.,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
INTERIOR,

Defendant.

'09 CV 1 62 6 JAH

WMC

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

5 U.S.C. §552 et seq. Freedom of
Information Act

BY FAX

INTRODUCTION

1. The United States Department of the Interior ("Interior Department") has refused a Freedom of Information Act request for an unredacted copy of its investigative report pertaining to November 22, 2006 fatal off road vehicle accident where an unknown individual at the scene "smelled of alcohol."

2. Plaintiff, Yamaha Motor Corporation, U.S.A. ("Yamaha"), brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq., for declaratory and injunctive relief against Defendant, the United States Department of Interior, Bureau of Land Management ("BLM"), to order the production of records that have been improperly withheld from Yamaha. Despite Yamaha's repeated requests,

1 the BLM has refused to produce an unredacted copy of an Incident report pertaining to
2 a fatal off road vehicle accident that occurred on November 22, 2006.

3 JURISDICTION AND VENUE

4 3. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B),
5 28 U.S.C. § 1331, and 5 U.S.C. §§ 701-706, and is empowered to grant the requested
6 relief by 28 U.S.C. & 2201. Venue is proper in this Court pursuant to 5 U.S.C. §
7 552(a)(4)(B) and 28 U.S.C. § 1391(e).

8 PARTIES

9 4. Plaintiff Yamaha Motor Corporation, U.S.A. is distributor of certain motor
10 vehicles, including the Yamaha Rhino. It is a corporation duly organized under the laws
11 of the State of California with its principal place of business located in Cypress,
12 California.

13 5. The Interior Department is the executive department responsible for
14 protecting and providing access to the United States natural and cultural heritage.
15 Defendant BLM is an agency of the Interior Department that manages public lands,
16 including recreational areas. The Interior Department and BLM are agencies of the
17 United States within the meaning of 5 U.S.C. §552 (f).

18 BACKGROUND

19 6. On November 22, 2006 at approximately 9:15 p.m., 13 year old Abigail West
20 was involved in a fatal accident while riding as a passenger in a heavily modified
21 Yamaha Rhino off road vehicle that was being driven by 15 year old Allyson Brooke
22 Taylor on lands within this Federal Judicial District that are managed and/or patrolled by
23 the BLM.

24 7. The BLM responded to the incident on November 22, 2006 with three
25 Officers. They investigated the accident and prepared a report. In response to a
26 Freedom of Information Act request made by Yamaha, the BLM produced a heavily
27 redacted report indicating that an unknown individual "was with her father next to the
28 accident, REDACTED, (dob/ REDACTED phone # REDACTED. REDACTED smelled

1 of alcohol." There is no other mention of alcohol use in any other official report
2 prepared that evening, notwithstanding the fact that several photographs show empty
3 beer cans and beer cases around the accident scene. A copy of the redacted report
4 produced by the BLM in response to Yamaha's FOIA request is attached as Exhibit 1.

5 8. On October 4, 2007, Abigail West's parents, Jeff and Tracy West filed a
6 wrongful death lawsuit in Orange County Superior Court, Case No. 07CC10562,
7 alleging that Yamaha Motor Corporation, U.S.A. distributed the Rhino with design and
8 manufacturing defects ("State Court Action.") Yamaha Motor Corporation, U.S.A.
9 vigorously denies the allegations in the State Court Action.

10 STATUTORY FRAMEWORK

11 9. The Freedom of Information Act, 5 U.S.C. § 552, mandates disclosure of
12 records held by a federal agency, in response to a request for such records by a
13 member of the public, unless records fall within certain narrow statutory exemptions.

14 10. The basic purpose of the FOIA is to enable the public to hold the
15 government accountable for its actions, though transparency and public scrutiny of
16 governmental operations and activities. Through access to government information the
17 FOIA helps the public better understand the government, thereby enabling a vibrant
18 and functioning democracy.

19 11. Any member of the public may make a request for records to an agency of
20 the United States under the FOIA. An agency that receives a FOIA request must
21 respond in writing to the requestor within 20 business days after the receipt of such
22 request. 5 U.S.C. § 552(a)(6)(A)(i). In its response the agency must inform the
23 requestor whether or not it intends to comply with the request, provide reasons for its
24 determination, and inform the requestor of her right to appeal the determination. Id.

25 12. A FOIA requestor who has been denied records may appeal the denial to
26 the agency. The agency must make a determination on the appeal within 20 business
27 days of receipt of the appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

28 13. A FOIA requestor is deemed to have exhausted its administrative remedies

1 if the agency fails to comply with the statutory time limits. 5 U.S.C. § 552(a)(6)(C)(I).

2 14. The FOIA requires an agency to timely disclose all records responsive to a
3 FOIA request that do not fall within nine narrowly construed statutory exemptions. 5
4 U.S.C. § 552(a)(3)(A); 5 U.S.C. § 552(b)(1)- (b)(9). The FOIA also requires an agency
5 to make a reasonable search for responsive records. Zemansky v. Environmental
6 Protection Agency, 767 F.2d 569, 571 (9th Cir. 1985).

7 15. Upon complaint, a district court has jurisdiction to enjoin the agency from
8 withholding records and to order production of records that are subject to disclosure. 5
9 U.S.C. § 552(a)(4)(B).

10 FOIA REQUESTS

11 16. On February 21, 2008, former counsel for Yamaha, Wilson Elser,
12 Moskowitz, Edelman & Dicker sent a written FOIA request to the Bureau of Land
13 Management.

14 17. On March 19, 2008, a the BLM sent correspondence to Yamaha's counsel
15 stating that the BLM would only produce partially redacted copies of Incident Report
16 #0676600092 ("Redacted Report"), and enclosed a copy of the Redacted Report. The
17 BLM contended that Exemptions 6 (law enforcement name and badge number), 7C
18 (personal privacy), and 7F (personal safety) allowed the BLM to redact on its report.

19 18. Yamaha's counsel timely appealed the BLM's FOIA response on March 28,
20 2008.

21 19. Darrell R. Strayhorn, FOIA Appeals Officer of the Department of Interior
22 replied to the appeal on June 26, 2008. Mr. Strayhorn stated the Interior Department
23 had an "extraordinarily large number of appeals pending in the Department ahead of
24 yours" and could not consider the appeal within the required 20 days. Mr. Strayhorn
25 informed Yamaha's counsel that Yamaha was free to seek judicial review pursuant to 5
26 U.S.C. §552 (a)(4)(B). Appeal Number 2008-110 was assigned to the case.

27 20. On September 30, 2008, Yamaha's counsel, Bowman and Brooke contacted
28 Larry Weitzel of the BLM office in Sacramento, California to follow up on the status of

1 the FOIA request. Mr. Weitzel advised Bowman and Brooke its best course of action
2 would be to seek judicial review.

3 21. Somebody at the scene of this fatal accident smelled of alcohol. In order to
4 properly defend itself, Yamaha is entitled to know who.

5 TOUHY REQUEST

6 22. On February 19, 2009, Yamaha took the additional step of requesting an
7 unredacted copy of the records pursuant to Touhy v. Ragen 340 U.S. 462 (1951). The
8 Touhy case predates FOIA and established guidelines for Federal agencies to release
9 records. The Interior Department's regulations set up pursuant Touhy are set forth in
10 43 CFR §2.82. The Interior Department has not responded to Yamaha's Touhy
11 request.

12 CLAIM FOR RELIEF

13 Violation of the Freedom of Information Act

14 23. Plaintiff realleges and incorporates, as though fully set forth herein, each
15 and every allegation contained in the above paragraphs.

16 24. Interior Department and BLM have violated 5 U.S.C. § 552(a)(3)(A) by failing
17 to promptly release agency records in response to the FOIA request. Furthermore,
18 Interior Department and BLM have violated 5 U.S.C. § 552(a)(1) & (a)(2) by failing to
19 make its records available to the public. Interior Department and BLM have no legal
20 basis for its actions in withholding the right of access to such documents, as its reliance
21 on Exemptions 6, 7C and 7F have no basis in law or fact.

22 25. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) because Interior
23 Department and BLM continue to improperly withhold agency records in violation of the
24 FOIA. Plaintiff will suffer irreparable injury from, and have no adequate legal remedy
25 for, Interior Department and BLM's illegal withholding of government documents
26 pertaining to the its observations and investigations relating to the November 22, 2006
27 fatal incident.

28 26. Declaratory relief is authorized under 22 U.S.C. § 2201 because an actual

1 controversy exists regarding Interior Department and BLM's improper withholding of
2 agency records in violation of the FOIA. An actual controversy exists because Plaintiff
3 contends that Interior Department and BLM's continuing failure to act with respect to
4 Plaintiff's FOIA request is in violation of the law, whereas Interior Department and BLM
5 contend otherwise.

6 WHEREFORE, Plaintiff prays for judgment against Interior Department and BLM
7 as follows:

8 (a) For declaratory relief declaring that Interior Department and BLM's failure to
9 disclose the records requested by Plaintiff is unlawful;

10 (b) For injunctive relief ordering Interior Department and BLM to process
11 immediately and expeditiously Plaintiff's FOIA request and, upon such processing, to
12 make available the requested records to Plaintiff;

13 (c) For Plaintiff's reasonable attorney fees and other litigation costs reasonably
14 incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

15 (d) For such other relief as the Court may deem just and proper.

16
17 Dated: July 27, 2009

BOWMAN AND BROOKE LLP

18
19 By: 

20 Richard L. Stuhlberg
21 Andrew T. Ryan
22 Attorneys for Defendant, YAMAHA
23 MOTOR CORPORATION, U.S.A.
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25
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EXHIBIT 1

UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT INCIDENT/INVESTIGATION REPORT						Page No. 1
INCIDENT # 0676600092	OFFICE CA*670 EL CENTRO FO	DATE OF INCIDENT 11/22/06	TIME OF INCIDENT 2200	DAY OF WEEK Wednesday		
ACTION TAKEN ACTIVITY/PATROL LOG ENTRY		DISPOSITION CLOSED, INCIDENT ONLY				
DATE REPORTED 11/22/06	TIME REPORTED 2200	DATE INVESTIGATED 11/22/06		TIME INVESTIGATED 2200		
DATE CLEARED		TIME CLEARED		LOCATION OF INCIDENT MM7.5 WHEELER RD SUPERSTITION MOUNTAINS		
STATE CA	COUNTY IMPERIAL	LAND STATUS PUBLIC, BLM	UTM EAST/NORTH	LAT/LONG		
LEGAL						
OFFENSE(S) 999 ATV ACCIDENT / FATAL						
INVESTIGATING OFFICER [REDACTED]			CASE RELATED TO			
INVOLVED PERSONS						
TYPE V	NAME WEST, ABIGAIL RAE				HOME PHONE	
ALIASES					WORK PHONE	
ADDRESS						
DOB 06/16/93	AGE 13	SEX F	RACE WHITE	SSN		
HEIGHT	WEIGHT	HAIR	EYES			
DLN/OLN		DLN/OLN STATE				
TYPE V	NAME [REDACTED]				HOME PHONE	
ALIASES					WORK PHONE	
ADDRESS						
DOB [REDACTED]	AGE [REDACTED]	SEX [REDACTED]	RACE [REDACTED]	SSN		
HEIGHT	WEIGHT	HAIR	EYES			
DLN/OLN		DLN/OLN STATE				
VEHICLE(S)						
TYPE MOTOR VEHICLE	LICENSE/BOW/TAIL#		STATE CA	VIN		
MAKE YAMAHA	MODEL RHINO	STYLE 4WD UTILITY VEHICLE		YEAR	COLOR BLUE	
OWNER [REDACTED]						
NARRATIVE						
<p>Edited 11/29/06 - 08:43:01 By [REDACTED] 11-44 [REDACTED] [Narrative ID = 0676600092 INC0001001001] Added 11/23/06 - 11:12:22 By [REDACTED] ON 11-22-06 at approx 2000 hours a blue Yamaha Rhino was westbound on Wheeler Rd by mile marker 7.5. The driver, [REDACTED] said she turned and rolled the Rhino. [REDACTED] said the Rhino landed on the passenger, Abbey</p>						
OFFICER [REDACTED]		BADGE # [REDACTED]	APPROVED BY			
TITLE RANGER		TITLE				
SIGNATURE		SIGNATURE				
RELEASE TO						

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
INCIDENT/INVESTIGATION REPORT - CONTINUATION PAGE

Page No. 2

INCIDENT # 0676600092	OFFICE CA*670 EL CENIRO FO	STATE CA	DATE OF INCIDENT 11/22/06
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LOCATION OF INCIDENT MM7.5 WHEELER RD SUPERSITION MOUNTAINS	INVESTIGATING OFFICER [REDACTED]
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NARRATIVE (continued)

WEST (Abigail Rae West dob/06-16-1993). WEST was later pronounced dead by a flight nurse from Life Flight.

[REDACTED] said both were wearing seatbelts. No helmets worn.

An off duty US Forest Service firefighter from the Descanso Ranger District of the Cleveland National Forest, came upon the scene of the accident first. The vehicle was lifted off WEST and CPR was initiated. He also said both patients were wearing seatbelts.

[REDACTED] was with her father next to the accident, [REDACTED] (dob/[REDACTED]) phone # [REDACTED] smelled of alcohol.

The father of WEST was on scene. His name is [REDACTED] (dob/[REDACTED]) from [REDACTED]

CHP is the investigating agency. GOLD CROSS Ambulance, ICSO and Life Flight on scene.

OFFICER [REDACTED]	BADGE # [REDACTED]	APPROVED BY
TITLE RANGER		TITLE
SIGNATURE		SIGNATURE
RELEASE TO		

COPY

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

2009 JUL 27 PM 3:31

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

I. (a) PLAINTIFFS

Yamaha Motor Corporation, U.S.A.

DEFENDANTS

County of Residence of First Listed Defendant Washington, D.C.

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Attorney General of the United States

BY FAX

(b) County of Residence of First Listed Plaintiff Orange County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrew T. Ryan, Bowman and Brooke, LLP, 879 W. 190th Street,
Suite 700, Gardena, CA 90254, (310)-768-3068

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 552 et seq.Brief description of cause:
Freedom of Information Act Appeal

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/27/09

FOR OFFICE USE ONLY

RECEIPT # 3402 AMOUNT 350 APPLYING IFP JUDGE MAG. JUDGE

7/27/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS003402
Cashier ID: sramirez
Transaction Date: 07/27/2009
Payer Name: ONE LEGAL LLC

CIVIL FILING FEE
For: YAMAHA MOTOR CORP.
Case/Party: D-CAS-3-09-CV-001626-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3084801
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.